

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GILBERTO GOMEZ GARCIA,
JONATHAN GOMEZ RIVERA,
JOSE RODRIGUEZ LLERENAS,
FRANCISCO MUNOZ MEDRANO,
SANDRO VARGAS LEYVA,
ALEJANDRO CHAVEZ MONROY,
and VICTOR FRANCISCO
PADILLA PLASCENCIA, as
individuals and on behalf of all other
similarly situated persons,

Plaintiffs,

v.

STEMILT AG SERVICES, LLC,

Defendant.

NO. 2:20-CV-0254-TOR

ORDER GRANTING IN PART AND
DENYING IN PART SECOND
MOTION FOR CLASS
CERTIFICATION

BEFORE THE COURT is Plaintiffs' Second Motion for Class Certification.
(ECF No. 208). This matter was submitted for consideration with oral argument
on June 16, 2022. Andres Munoz, Joachim Morrison, Laura R. Gerber, and
Nathan Nanfelt appeared on behalf of Plaintiffs. Brendan V. Monahan, Lance A.

ORDER GRANTING IN PART SECOND MOTION FOR CLASS
CERTIFICATION ~ 1

1 Pelletier, and Maricarmen C. Perez-Vargas appeared on behalf of Defendant. The
2 Court has reviewed the record and files herein, and is fully informed. For the
3 reasons discussed below, Plaintiff's Second Motion for Class Certification is
4 granted in part and denied in part.

5 **BACKGROUND**

6 This case concerns H-2A farm workers who were employed by Stemilt in
7 Washington. On August 20, 2021, the Court certified the following FLCA class
8 for claims raised under RCW 19.30.110(7): "All Mexican nationals employed at
9 Stemilt Ag Services, LLC in Washington, pursuant to both the 2017 H-2A contract
10 from January 16, 2017 through August 11, 2017 and the H-2A contract from
11 August 14, 2017 through November 14, 2017." ECF No. 193 at 37. Following
12 certification, the Court allowed a final amendment for an FLCA claim relating to
13 the August 2017 Clearance Order. ECF No. 229.

14 The operative Fourth Amended Complaint raises the following class causes
15 of action: (1) "TVPA Class" for violations under 18 U.S.C. § 1589(a)(3)-(4), RCW
16 49.60.180(3), and 42 U.S.C. § 1981. ECF No. 233 at 31-33, ¶ A; (2) "Wait Time
17 Class" for violation of RCW 49.52.050(2). *Id.* at 34-35, ¶ B; and (3) "FLCA
18 Class" for violations under RCW 19.30.110(1), (2), (5), (7); RCW 19.30.120(2).
19 *Id.* at 35-38, ¶ C. On June 2, 2022, the Court dismissed Plaintiffs' FLCA claim
20 under RCW 19.30.110(1). ECF No. 286.

1 Plaintiff moves to certify (1) An FLCA Disclosure Class for H-2A workers
2 who worked only the second contract brought by intervenor Plaintiffs Mr.
3 Rodriguez Llerenas and Mr. Munoz Medrano and (2) A TVPA Class for H-2A
4 workers from the Pasco Region brought by intervenor Plaintiffs Mr. Vargas Leyva,
5 Mr. Chavez Monroy, and Mr. Padilla Plascencia. ECF No. 208 at 2. At the
6 Court's direction, the parties filed supplemental briefing. ECF Nos. 252-53, 255,
7 257, 267-69, 272-73. Except where noted, the facts are largely the same as those
8 set forth in the Court's prior order. ECF No. 193.

9 DISCUSSION

10 A. Class Certification Standard

11 Certification of a class action lawsuit is governed by Federal Rules of Civil
12 Procedure 23. *See Marlo v. UPS, Inc.*, 639 F.3d 942, 947 (9th Cir. 2011) ("Rule
13 23 governs the class-certification issue even if the underlying claim arises under
14 state law."). Pursuant to Rule 23(a), the party seeking class certification must
15 demonstrate that "(1) the class is so numerous that joinder of all members is
16 impracticable; (2) there are questions of law or fact common to the class; (3) the
17 claims or defenses of the representative parties are typical of the claims or defenses
18 of the class; and (4) the representative parties will fairly and adequately protect the
19 interests of the class." Fed. R. Civ. P. 23(a).

1 Provided the proposed class satisfies Rule 23(a), courts must further
2 determine whether certification is appropriate under Rule 23(b). Where a party
3 seeks certification of a so-called “damages class” under Rule 23(b)(3), as here, he
4 or she must demonstrate that (1) “questions of law or fact common to class
5 members predominate over any questions affecting only individual members;” and
6 (2) “a class action is superior to other available methods for fairly and efficiently
7 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). As the party moving for
8 certification, the plaintiff bears the burden of establishing that the foregoing
9 requirements have been satisfied. *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d
10 581, 588 (9th Cir. 2012), *overruled on other grounds by Olean Wholesale Grocery*
11 *Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651 (9th Cir. 2022)).

12 A court must perform a “rigorous analysis” to determine whether each of
13 these class certification prerequisites has been satisfied. *Gen. Tel. Co. v. Falcon*,
14 457 U.S. 147, 161 (1982). “Frequently that ‘rigorous analysis’ will entail some
15 overlap with the merits of the plaintiff’s underlying claim.” *Wal-Mart Stores, Inc.*
16 *v. Dukes*, 564 U.S. 338, 351 (2011); *see also Ellis v. Costco Wholesale Corp.*, 657
17 F.3d 970, 981 (9th Cir. 2011) (emphasizing that a district court “must” consider the
18 merits of a plaintiff’s claim to the extent that they overlap with the prerequisites for
19 class certification under Rule 23(a)). That is, “[a] party seeking class certification
20 must affirmatively demonstrate his compliance with the Rule—that is, he must be

1 prepared to prove that there are *in fact* sufficiently numerous parties, common
2 questions of law or fact, etc.” *Wal-Mart*, 564 U.S. at 350. The ultimate decision to
3 certify a class is within a court’s discretion. *Vinole v. Countrywide Home Loans,*
4 *Inc.*, 571 F.3d 935, 944 (9th Cir. 2009).

5 1. *Rule 23(a) Requirements*

6 a. Numerosity

7 Rule 23(a)(1) provides that a proposed class must be “so numerous that
8 joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Whether
9 joinder would be impracticable depends on the facts and circumstances of each
10 case and does not, as a matter of law, require any specific minimum number of
11 class members.” *Smith v. Univ. of Wash. Law Sch.*, 2 F. Supp. 2d 1324, 1340
12 (W.D. Wash. 1998) (citation omitted). “Generally, 40 or more members will
13 satisfy the numerosity requirement.” *Garrison v. Asotin Cty.*, 251 F.R.D. 566, 569
14 (E.D. Wash. 2008) (citing *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473,
15 483 (2d Cir. 1995)). Conversely, the Supreme Court has indicated that a class of
16 15 “would be too small to meet the numerosity requirement.” *Gen. Tel. Co. of the*
17 *Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980). “Where the exact size of the class is
18 unknown but general knowledge and common sense indicate that it is large, the
19 numerosity requirement is satisfied.” *Orantes-Hernandez v. Smith*, 541 F. Supp.
20 351, 370 (C.D. Cal. 1982).

1 b. Commonality

2 Rule 23(a)(2) requires that “there are questions of law or fact common to the
3 class.” Fed. R. Civ. P. 23(a)(2). For purposes of this rule, “[c]ommonality exists
4 where class members’ situations share a common issue of law or fact, and are
5 sufficiently parallel to insure a vigorous and full presentation of all claims for
6 relief.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir.
7 2010) (internal quotation and citation omitted). At its core, the commonality
8 requirement is designed to ensure that class-wide adjudication will “generate
9 common *answers* apt to drive the resolution of the litigation.” *Wal-Mart*, 564 U.S.
10 at 350 (internal quotation and citation omitted).

11 “This does not, however, mean that *every* question of law or fact must be
12 common to the class; all that Rule 23(a)(2) requires is a single *significant* question
13 of law or fact.” *Abdullah v. U.S. Sec. Assoc., Inc.*, 731 F.3d 952, 957 (9th Cir.
14 2013) (internal quotation marks omitted). “If a common question will drive the
15 resolution, even if there are important questions affecting only individual
16 members, then the class is ‘sufficiently cohesive to warrant adjudication by
17 representation.’” *Jabbari v. Farmer*, 965 F.3d 1001, 1005 (9th Cir. 2020) (quoting
18 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623-24 (1997)). Individual
19 defenses do not necessarily render a case unsuitable for class certification. *Ellis*,
20 657 F.3d at 984.

1 c. Typicality

2 Rule 23(a)(3) requires that “the claims or defenses of the representative
3 parties [be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3).
4 This requirement serves to ensure that “the interest of the named representative
5 aligns with the interests of the class.” *Wolin*, 617 F.3d at 1175. Factors relevant to
6 the typicality inquiry include “whether other members have the same or similar
7 injury, whether the action is based on conduct which is not unique to the named
8 plaintiffs, and whether other class members have been injured by the same course
9 of conduct.” *Ellis*, 657 F.3d at 984. Stated differently, “[t]ypicality refers to the
10 nature of the claim or defense of the class representative, and not to the specific
11 facts from which it arose or the relief sought.” *Id.*; *see also Stearns v. Ticketmaster*
12 *Corp.*, 655 F.3d 1013, 1019 (9th Cir. 2011), *abrogated on other grounds by*
13 *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013) (“The typicality requirement looks
14 to whether the claims of the class representatives are typical of those of the class,
15 and is satisfied when each class member’s claim arises from the same course of
16 events, and each class member makes similar legal arguments to prove the
17 defendant’s liability.”)(brackets omitted).

18 d. Adequacy of Representation

19 The final prerequisite for class certification under Rule 23(a)(4) is that “the
20 representative parties will fairly and adequately protect the interests of the class.”

1 Fed. R. Civ. P. 23(a)(4). This requirement applies to both the named class
2 representatives and to their counsel. “To determine whether named plaintiffs will
3 adequately represent a class, courts must resolve two questions: (1) do the named
4 plaintiffs and their counsel have any conflicts of interest with other class members
5 and (2) will the named plaintiffs and their counsel prosecute the action vigorously
6 on behalf of the class?” *Ellis*, 657 F.3d at 985 (internal quotations omitted).

7 2. *Rule 23(b)(3) Requirements*

8 a. Predominance

9 Under Rule 23(b)(3), the inquiry is whether common questions *predominate*
10 over individualized questions. *See Wolin*, 617 F.3d at 1172 (“While Rule 23(a)(2)
11 asks whether there are issues common to the class, Rule 23(b)(3) asks whether
12 these common questions predominate.”). Although Rule 23(a)(2) and Rule
13 23(b)(3) both address commonality, “the 23(b)(3) test is ‘far more demanding,’ and
14 asks ‘whether proposed classes are sufficiently cohesive to warrant adjudication by
15 representation.’” *Id.* (quoting *Windsor*, 521 U.S. at 623-24).

16 b. Superiority

17 In considering whether class adjudication is superior to separate individual
18 actions, a court must determine “whether the objectives of the particular class
19 action procedure will be achieved in the particular case.” *Hanlon v. Chrysler*
20 *Corp.*, 150 F.3d 1011, 1023 (9th Cir. 1998), *overruled on other grounds by Wal-*

1 *Mart*, 564 U.S. at 338. Courts must consider, *inter alia*, (1) the interests of
2 individual class members in pursuing their claims separately; (2) the extent of any
3 existing litigation concerning the same subject-matter; (3) the desirability of
4 concentrating the litigation in a particular forum; and (4) the feasibility of
5 managing the case as a class action. Fed. R. Civ. P. 23(b)(3)(A)-(D). A court’s
6 consideration of these factors must “focus on the efficiency and economy elements
7 of the class action so that cases allowed under subdivision (b)(3) are those that can
8 be adjudicated most profitably on a representative basis.” *Zinser v. Accufix*
9 *Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir.), *opinion amended on denial of*
10 *reh’g*, 273 F.3d 1266 (9th Cir. 2001) (quotation and citation omitted).

11 As an initial matter, because the Court dismissed Plaintiffs’ FLCA claim
12 under RCW 19.30.110(1), that proposed class is denied. ECF No. 252 at 4-5. The
13 Court notes Plaintiffs have not moved to certify class claims alleged in the Fourth
14 Amended Complaint under Count IV (WLAD – TVPA Class), Count VII (Wages
15 – Wait Time Class), Count VIII (Alienage Discrimination – TVPA Class), and
16 Count VI claims under RCW 19.30.110(5) and 19.30.120(2). *See* ECF No. 233.
17 As a result, the Court does not address these claims.

18 **B. Previously-Certified FLCA Disclosure Class**

19 The Court previously certified an FLCA class for claims arising under RCW
20 19.30.110(7) for “All Mexican nationals employed at Stemilt Ag Services, LLC in

1 Washington, pursuant to *both* the 2017 H-2A contract from January 16, 2017
2 through August 11, 2017 and the H-2A contract from August 14, 2017 through
3 November 15, 2017.” ECF No. 193 at 37. RCW 19.30.110(7) requires farm labor
4 contractors to furnish a form to workers that contains required disclosures.

5 Regarding the Court’s certification under RCW 19.30.110(7) only,
6 “Plaintiffs assume this was a clerical error and the Court meant to include the bond
7 disclosure claim under RCW 19.30.110(2).” ECF No. 252 at 4 (footnote).¹ This
8 was not a clerical error. The only claim the Court certified under RCW
9 19.30.110(7) was on the “admittedly novel”² issue of whether Defendant was
10 required to distribute two forms to workers who worked two contracts:

11 Subject to the limitations described above, the Court finds that the
12 predominance requirement is met as to the FLCA Disclosure Claims
13 for the subclass of workers who worked on both contracts on the issue
14 of *whether Defendant was required to provide a second FLCA*
disclosure for the second contract. This legal statutory analysis
question will provide a single answer for all members of the subclass.

15 ECF No. 193 at 29 (emphasis added).

17 ¹ At times, the Court lumped the FLCA claims together. *See* ECF No. 193 at
18 13. However, claims under RCW 19.30.110(2) and (7)(h) were not previously
19 certified as there was no analysis as to these distinct claims.

20 ² ECF No. 193 at 16.

1 Plaintiffs' other FLCA disclosure claims are substantively different.
2 Whether Defendant was required to provide a second form is distinct from whether
3 the forms included content required by RCW 19.30.110(2) and (7)(h). Therefore,
4 the Court cannot broadly certify the proposed class on the grounds of the Court's
5 prior order, as Plaintiffs suggest. Nonetheless, for the reasons discussed *infra*, the
6 Court will certify the claims under RCW 19.30.110(2) and (7)(h) for the proposed
7 class and for the previously-certified class.

8 **C. FLCA Disclosure Class on Second Contract**

9 Plaintiffs propose an FLCA Disclosure Class for claims brought under RCW
10 19.30.110(2), (7), and (7)(h) for "All Mexican nationals employed by Stemilt Ag
11 Services, LLC in Washington, pursuant only to the second H-2A contract from
12 August 14, 2017 through November 15, 2017." ECF No. 208, 252.

13 *1. Rule 23(a) Requirements*

14 a. Numerosity

15 Defendant concedes numerosity for the FLCA disclosure claims. ECF No.
16 244 at 12. In any event, the Court finds 359 proposed class members meets the
17 numerosity requirement. *See Garrison v. Asotin Cty.*, 251 F.R.D. 566, 569 (E.D.
18 Wash. 2008) ("Generally, 40 or more members will satisfy the numerosity
19 requirement.").

20 //

1 b. Commonality

2 Plaintiffs asserts commonality exists on the FLCA disclosure claims due to
3 the common question of whether Defendant's uniform FLCA form provided the
4 requisite disclosures. ECF No. 252 at 7. Plaintiffs allege the disclosures "did not
5 include the dates of employment for the apple harvest, piece-rate wages offered, or
6 names and addresses of all orchard owners where they could be employed." ECF
7 No. 252 at 4. Defendant argues "Plaintiffs do not address the elements of their
8 claims, let alone that these claims may be established with common evidence."
9 ECF No. 267 at 7. Because the forms are identical, common evidence will
10 "generate common answers apt to drive the resolution of the litigation." *Dukes*,
11 564 U.S. at 350. Therefore, the commonality requirement is met.

12 c. Typicality

13 Plaintiffs assert typicality exists on the FLCA disclosure claims because
14 Intervenor-Plaintiffs Mr. Rodriguez Llerenas and Mr. Munoz Medrano are workers
15 who only worked on the second contract. ECF No. 252 at 7. Defendant argues
16 that typicality is not met because Intervenor-Plaintiffs were not "recruited" and the
17 disclosures were not inadequate. ECF No. 267 at 23-24. The Court notes
18 Defendant admitted it recruited H-2A workers, including Intervenor-Plaintiffs Mr.
19 Rodriguez Llerenas and Mr. Munoz Medrano. ECF No. 242 at 10, ¶¶ 45, 130, 133.

1 Intervenor-Plaintiffs set forth the factual circumstances demonstrating
2 claims typical of the class: the injury across class members is the receipt of
3 identical inadequate disclosures and legal arguments will center on whether these
4 disclosures are inadequate under Washington law. Defendant's concerns are more
5 appropriately addressed in a motion on the merits through summary judgment or
6 through decertification following discovery.³ The Court finds that Intervenor-
7 Plaintiffs who worked on the second contract have claims typical of class wide
8 resolution. *Ellis*, 657 F.3d at 984. Therefore, the typicality requirement is met.

9 d. Adequacy

10 Defendant concedes adequacy of counsel. ECF No. 244 at 12. However,
11 Defendant disputes that Intervenor-Plaintiffs are adequate representatives for the
12 FLCA claims because they were not "recruited" and that both Intervenor Plaintiffs
13 Mr. Rodriguez and Mr. Padilla have failed to appear for depositions and Plaintiffs'
14 counsel are unable to get in touch with them. ECF No. 267 at 21-22, 26. As noted
15 *supra*, Defendant admitted it recruited Intervenor-Plaintiffs Mr. Rodriguez
16

17 ³ The initial discovery cutoff was September 15, 2021. ECF No. 23 at 4. This
18 deadline was stayed pending the Court's ruling on the first motion for class
19 certification. ECF No. 159. An updated scheduling order is forthcoming.
20

1 Llerenas and Mr. Munoz Medrano. ECF No. 242 at 10, ¶¶ 130, 133. Moreover,
2 the failure to attend past depositions is alone not sufficient to render Intervenor
3 Plaintiffs inadequate class representatives. *Caldera v. Am. Med. Collection*
4 *Agency*, 320 F.R.D. 513, 518 (C.D. Cal. 2017).

5 The Court finds no reason to doubt the competency or commitment of the
6 class representative and class counsel, nor does the Court identify any conflicts at
7 present. If Intervenor Plaintiffs fail to vigorously prosecute the action moving
8 forward, Defendant may move to decertify the class. Therefore, at this time,
9 adequacy of representation has been established.

10 2. *Rule 23(b)(3) Requirements*

11 a. Predominance

12 Plaintiff relies on the Court's prior ruling to establish predominance. ECF
13 No. 252 at 8. As discussed *supra*, the claims are not identical. While not identical,
14 Plaintiff's FLCA disclosure claims are straightforward. RCW 19.30.110(2)
15 requires a farm labor contractor to "[d]isclose to every person with whom he or she
16 deals in the capacity of a farm labor contractor the amount of his or her bond and
17 the existence and amount of any claims against the bond." RCW 19.30.110(7)(h)
18 requires a farm labor contractor to furnish a form to each worker that includes
19 "[t]he name and address of the owner of all operations, or the owner's agent, where
20

1 the worker will be working as a result of being recruited, solicited, supplied, or
2 employed by the farm labor contractor.”

3 Because Defendant provided uniform disclosures, the Court finds that the
4 FLCA disclosure claims under RCW. 19.30.110(2) and (7)(h) are sufficiently
5 cohesive to warrant adjudication by class representation with little to no
6 individualized inquiries required. *Wolin*, 617 F.3d at 1172. Defendant’s
7 substantive arguments are best suited for briefing on the merits. Therefore, the
8 predominance requirement is met.

9 b. Superiority

10 The Court previously found the superiority element met where, the class
11 members have limited English proficiency, financial resources, and understanding
12 of this country’s legal system, most members reside in Mexico, Defendant and
13 most potential witnesses are in this District, and most individual claims would be
14 time barred at this point. ECF No. 193 at 36. The Court finds the superiority
15 requirement met for the same reasons stated in the prior Order.

16 Finding both Rule 23(a) and 23(b) satisfied, the Court grants class
17 certification for Plaintiff’s FLCA Disclosure Subclass for claims brought under
18 RCW 19.30.110(2) and (7)(h).

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D. Pasco Area TVPA Class for Production Allegations

Plaintiffs propose a narrowed TVPA Class for Pasco region workers for Counts I and II “All Mexican nationals employed by Stemilt Ag Services, LLC in Stemilt’s three Pasco area orchards of Ice Harbor, Arrow Ridge, and JVO, pursuant to the 2017 H-2A contract from August 14, 2017 through November 15, 2017.” ECF No. 252 at 2. The production requirement claims are brought under 18 U.S.C. § 1589(a)(4) and 18 U.S.C. § 1589(a)(3). ECF No. 233 at 38-39, ¶¶ 19-21.⁴

As relevant here, the TVPA prohibits a person from obtaining labor or services through “abuse or threatened abuse of law or legal process” and through “any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.” 18 U.S.C. §§ 1589(a)(3), (4). “Serious harm” is defined as “harm ... that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order

⁴ Plaintiffs make a passing reference to include the breach of contract claims. ECF No. 208 at 6. The Court declines to consider this count without full briefing. In any event, individual issues would predominate for the same reasons as the TVPA claims. *See* ECF No. 193 at 25.

1 to avoid incurring that harm.” 18 U.S.C. § 1589(c)(2). The threat to immigrants of
2 being forced to leave the country qualifies as serious harm. *United States v. Dann*,
3 652 F.3d 1160, 1172 (9th Cir. 2011).

4 The Court previously found Plaintiffs presented evidence of a common
5 policy from upper management that directs “progressive disciplinary action due to
6 not following the supervisor’s instructions, rather than low production.” ECF No.
7 193 at 21-22. However, the Court found that implementation of the discretionary
8 policy would predominate litigation due to the various orchards and conflicting
9 worker experiences. *Id.* at 24. Plaintiffs argue predominance is now satisfied with
10 new evidence from Ms. Ana Guerrero demonstrating a standard practice of
11 imposing a bin production requirement. ECF No. 252 at 16.

12 This testimony does not overcome the individual inquiries needed to prove
13 injury or liability for the TVPA claims. *Castillo v. Bank of AM., NA*, 980 F.3d 723,
14 732 (9th Cir. 2020). There is little uniformity in the workers’ experience regarding
15 threatened abuse or harm, even considering the new evidence. *Saucedo v. NW*
16 *Mgmt. & Realty Servs., Inc.*, 290 F.R.D. 671, 680 (E.D. Wash. 2013). For
17 example, the “discipline” for not meeting the alleged productivity standard would
18 include warnings, remedial training, coaching, reassignment, or no discipline at all.
19 *See, e.g.*, ECF Nos. 268-9 at 4, ¶¶ 6-7; 268-11 at 4, ¶¶ 5-7; 268-12 at 4, ¶¶ 7-8;
20 268-13 at 3, ¶¶ 5-6; 268-14 at 4-5, ¶¶ 7-9; 268-15 at 3-4, ¶¶ 6-8; 268-16 at 4, ¶¶ 8-

1 10; 269 at 6-7, ¶¶ 19-20. These examples highlight a broad array of individual
2 questions as to injury and liability that overwhelm the common issue of a
3 production standard. The Court finds once again that the predominance
4 requirement is not met for the TVPA claims. *See* ECF No. 193 at 24-25. The
5 Court declines to consider the remaining Rule 23(a) and 23(b) requirements.

6 **E. Pasco Area TVPA Class for Visa Allegations**

7 Plaintiffs propose a TVPA Class for Pasco region workers for Count III for
8 “All Mexican nationals employed by Stemilt Ag Services, LLC in Stemilt’s three
9 Pasco area orchards of Ice Harbor, Arrow Ridge, and JVO, pursuant to the 2017 H-
10 2A contract from August 14, 2017 through November 15, 2017.” ECF No. 252 at
11 2. The visa withholding claims are brought under 18 U.S.C. § 1592(a). ECF No.
12 233 at 39-40, ¶¶ 22-23.

13 As relevant here, the TVPA prohibits person from “knowingly destroy[ing],
14 conceal[ing], remov[ing], confiscate[ing], or possess[ing] any actual or purported
15 passport or other immigration document, or any other actual or purported
16 government identification document, of another person with intent to violate
17 section 1589 [or] to prevent or restrict or attempt to prevent or restrict, without
18 lawful authority, the person’s liberty to move or travel, in order to maintain the
19 labor or services of that person, when the person is or has been a victim of a severe
20 form of trafficking in persons.” 18 U.S.C. § 1592(a).

1 The Court previously found Plaintiffs presented no evidence of any common
2 policy, specifically noting any withholding was limited to the Tri-Cities area. ECF
3 No. 193 at 28. In response, Plaintiffs have narrowed the class to the Tri-Cities
4 area, specifically the “Pasco Region.” ECF No. 208. Plaintiffs also assert new
5 evidence from Ms. Guerrero that “confirms that she told all workers at the three
6 Pasco area orchards not to leave the orchards because if they were pulled over and
7 a government official wanted to see their documentation, it would be difficult to
8 prove that the workers were in the U.S. legally without the visa extensions.” ECF
9 No. 252 at 13.

10 Defendant points out that Plaintiffs’ proposed class includes workers whose
11 visa applications were not processed by USCIS until October 5, 2017 and workers
12 who received the visas prior to arrival in the in August 2017. ECF No. 267 at 20-
13 21. In reply, Plaintiffs assert this variety of claims (or lack thereof) “can be easily
14 resolved by creating a subclass of H-2A workers from the Pasco region who
15 worked both contracts, and thus, were subjected to fear due to Stemilt’s failure to
16 properly inform workers of their visa status and for telling them to remain within
17 the labor camps.” ECF No. 272 at 10.

18 Plaintiffs’ proposed class fails the predominance prong, as individual issues
19 on how and when workers obtained permits varies substantially. Even if the Court
20 were to adopt Plaintiffs’ further narrowing of the proposed class, Ms. Guerrero’s

1 testimony is not common evidence to prove the TVPA claim. The testimony does
2 not show Defendant knowingly concealed, confiscated, possessed or otherwise
3 unlawfully withheld any permits in order to maintain the labor or services of any
4 person. 18 U.S.C. § 1592(a). Plaintiffs do not address that the delay in the visa
5 renewals was due to USCIS, and there is no evidence that Defendant was in
6 possession of the permits at the time Ms. Guerrero told an unknown number of
7 workers not to leave the orchards without the (pending) permits. *See* ECF Nos.
8 267 at 18, 272 at 10. The Court finds the predominance requirements is not met
9 for this TVPA claim. The Court declines to consider the remaining Rule 23(a) and
10 23(b) requirements.

11 **ACCORDINGLY, IT IS HEREBY ORDERED:**

12 1. Plaintiff's Second Motion for Class Certification is **GRANTED in part**
13 and **DENIED in part**.

14 1. Pursuant to Fed. R. Civ. P. 23(b)(3), the Court hereby certifies the
15 following "FLCA Disclosure Class" in this case:

- 16 a. All Mexican nationals employed by Stemilt Ag Services, LLC in
17 Washington, pursuant only to the second H-2A contract from
18 August 14, 2017 through November 15, 2017 who received
19 disclosures in violation of RCW 19.30.110(2) and (7)(h).

1 2. Pursuant to Fed. R. Civ. P. 23(c)(1)(B), the Court hereby certifies the
2 following claims, including all damages related thereto:

3 a. The claim that Defendant, as a farm labor contractor, did not
4 disclose to every person with whom it dealt in the capacity of a
5 farm labor contractor the amount of its bond and the existence and
6 amount of any claims against the bond.

7 b. The claim that Defendant, as a farm labor contractor, did not
8 disclose, on a form prescribed by the director, furnished to each
9 worker, at the time of hiring, recruiting, soliciting, or supplying,
10 whichever occurs first, a written statement in English and any
11 other language common to workers who are not fluent or literate in
12 English that contains a description of: The name and address of the
13 owner of all operations, or the owner's agent, where the worker
14 will be working as a result of being recruited, solicited, supplied,
15 or employed by Defendant.

16 3. Because the Court did not define the claim associated with the "FLCA
17 Disclosure Subclass" certified in ECF No. 193, the Court hereby certifies
18 the following claim, including all damages related thereto:

19 The claim that Defendant, as a farm labor contractor, did not disclose,
20 on a form prescribed by the director, furnished to each worker, at the

1 time of hiring, recruiting, soliciting, or supplying, whichever occurs
2 first, a written statement in English and any other language common
3 to workers who are not fluent or literate in English that contains a
4 description of: The name and address of the owner of all operations,
5 or the owner's agent, where the worker will be working as a result of
6 being recruited, solicited, supplied, or employed by Defendant.

7 4. Intervenor-Plaintiffs Jose Rodriguez Llerenas and Francisco Munoz
8 Medrano are appointed as Class Representatives.

9 5. Columbia Legal Services and Keller Rohrbach L.L.P. are appointed as
10 Class Counsel.

11 6. Pursuant to Rule 23(c)(2)(B), within fourteen (14) days from the date of
12 this Order, class counsel shall serve and file a proposed "Notice" to
13 members of the certified classes and suggest a method by which this
14 should be accomplished and at whose expense. This "Notice" shall
15 comply with the requirements of Rule 23(c)(2)(B).

16 7. Defendant shall have fourteen (14) days from service of the proposed
17 "Notice" to serve and file any objections to the same.

18 8. Class counsel shall have seven (7) days from service of any objection to
19 serve and file a reply to the same.
20

1 9. The Court will thereafter Order how Notice is to be provided to class
2 members.

3 The District Court Executive is directed to enter this Order and furnish
4 copies to counsel.

5 DATED July 14, 2022.



Thomas O. Rice
THOMAS O. RICE
United States District Judge